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WOMEN AS JURORS.

Reforms which solve one problem often create many others equally difficult. Of this character is the reform which in enfranchising women, at the same time imposed upon them duties of citizenship hard for them to perform. Of these duties none are more difficult for women than that of determining the issues in a case at law. There are many serious and embarrassing situations caused by a woman's presence on a jury and these embarrassments sometimes affect the woman herself and sometimes the case which she is called upon to decide.

In England recently a judge at the Cornish Assizes allowed all women who desired to do so to withdraw from cases involving the investigation of acts of infidelity, adultery, obscenity and immorality. The judge said he was sorry to lose their services, because he thought women were, in such cases, better judges of the truth than men, and could more accurately pass upon the guilt or innocence of the "woman in the case."

Women are not only embarrassed themselves by service on a jury, but they are sometimes very embarrassing to lawyers on both sides of a case who do not know the psychology of a woman's mind and are not sure which way she is going to jump. For this reason, in many criminal cases, lawyers for the defense, at least, have been in the habit recently of striking the names of all women from the jury lists.

Women defendants themselves seem most anxious not to be tried by women. Two recent murder trials in Chicago and Cleveland illustrate some of the interesting phases of the sex question in the case of jury selection. The Chicago prosecutor declared, when a fair defendant had been acquitted by a male jury of the murder of her lover, that men in Cook County would not convict a beautiful woman. Whether this was not too broad a generalization, even if restricted to the chivalrous spirit of Cook Countyans, it seems to us to be a conclusive argument for woman's presence on a jury when a fair woman is the defendant. A woman juror will make the men understand the woman's motive; she will tear off the woman's mask and show up her guilt or innocence in such true colors that justice to society, as well as to defendants in such cases will be secured.

In the Kaber case, tried in Cleveland, the defense, it is reported, objected to women on the jury. They were evidently afraid of a woman's severity in passing judgment upon another woman who has not only dishonored her sex, but destroyed a home.

> **"And when our sex from injuries takes fire,**
> **Our softness turns to fury—and our thoughts**
> **Breathe vengeance and destruction."**

Voltaire said that "all the reasoning of men is not worth one sentiment of women." This, it will be objected, is just the reason why women should not serve on a jury, but to our mind it is a very strong recommendation in behalf of a woman's fitness to be a juror. It is ridiculous, in the first place, to say that jurymen ever "reason" about the evidence. The ordinary juryman has not the mental training by which he is able to solve a complicated state of facts and reach a right conclusion under the law and the evidence. As a matter of fact, in most cases, he pays very little attention to either the law or the evidence, and absolutely none whatever to the judge's instructions. His feelings decide the cases. The "impressions" made upon him by the parties, witnesses and attorneys lead him to the conclusion which he promptly embodies in a "verdict." If he is in doubt he throws up a dollar—heads, I win; tails, you lose.

If we were compelled to rely upon the "sentiments" of men or of women for justice, we should prefer to be tried by a jury of

women, provided we knew we had a just cause, since a woman's intuition will reach a just conclusion where frequently a man, who is unable or refuses to use his reason, will stumble into error.

A striking instance of this difference in the conceptions of justice between men and women came to the attention of the writer a few months ago. A group of ladies, some employed women and others housekeepers, were discussing a verdict of several thousand dollars given by a jury of men in favor of a maid against her mistress, a widow in comfortable circumstances in a western city. The maid had slipped and fallen on a hardwood floor which she herself had taken care of and polished for many years. The injustice of making the mistress liable for trying to keep her home beautiful in favor of one who was perfectly familiar with the surroundings and had herself prepared the floor and arranged the furnishings was so apparent to the women's sense of justice as to call for instant condemnation. We are inclined to believe that the ladies were right.

We are not alarmed at the new problems brought about by the enlargement of women's sphere of influence, at least, so far as the administration of the law is concerned. The embarrassments can easily be overcome; proper exemptions can and should be made. Mothers with little children to care for may, on proper showing, be excused. But the influence of women in the jury box cannot, on the whole, but prove wholesome and beneficial.

NOTES OF IMPORTANT DECISIONS

ATTRACTIVE NUISANCE DOCTRINE DEFINED.—Judicial nomenclature is not always logical or accurate and Judge Hough, in a recent case, takes exception to the word "nuisance" in the rule making the owner of a structure attractive to children liable for resulting injuries on the ground of maintaining a nuisance. New York, N. H. & H. R. Co. v. Fruchter, 271 Fed. 419 (C. C. A., 2d Cir.).

The question arose in this way: The City of New York at 149th street, maintains a bridge over the railroad tracks of the defendant. To the top girder of this bridge the defendant had, with the city's permission, fastened an electric wire. This top girder was 24 feet above the roadway and was strengthened and connected by trellis or lattice work with the beams and posts holding up the roadway. This metal lattice work made it possible for boys to climb to the top girder with no difficulty. Plaintiff, eight years old, climbed this lattice work to investigate a pigeon's nest. While reaching for one of the pigeons his hand came in contact with the company's live wire, from which he received the injuries for which he brings suit. The company contended that the bridge with the wire was not an attractive "nuisance" since it was a lawful structure and therefore could not be technically a nuisance. To this the Court replied:

"So it is too obvious to need comment that the court below treated the claim in suit as covered by what are known as the 'attractive nuisance,' 'lure,' or 'trap' cases. Since, so far as the courts of the United States are concerned, these cases are all assumed to rest on Railroad Co. v. Stout, 17 Wall. 657, 21 L. Ed. 745, the word 'nuisance' is inappropriate. A nuisance is that which 'unlawfully worketh hurt, inconvenience, or damage,' and neither the turntable of the Stout case nor the electric wire here to be considered was a nuisance; both were lawful enough. But many a lawful thing may be so negligently managed, handled, or maintained as to give rise to causes of action in tort. The true doctrine is that any composition of matter which lures or attracts the confiding ignorance of childhood to its own harm must be safeguarded as circumstances require, and of course the circumstances vary in almost every instance."

The defendant raised the question that it was the bridge and the lattice work on the bridge which was the "attraction" to children and not defendant's wire. To this the Court replied:

"It is noted that the defendant's structure was lawfully placed on top of the city bridge, and that probably the prime temptation for a boy was clambering up the bridge, which did not belong to defendant. But it was perfectly possible to physically protect the wire which did belong to defendant, while leaving the protection of the bridge to its own proprietor. This difference in ownership does not make any difference in the law. Electric, etc., Co. v. Healy, 65 Kan. 798, 70 Pac. 884."

THE PRESENT STATE OF INTERNATIONAL LAW.*

It is obvious that we cannot go on assuming that the laws and customs of war on land and at sea, the rules which regulate the rights and duties of neutral Powers and persons in case of war, retain the authority which we supposed them to possess in the month of July, 1914. These rules imposed their obligation upon all parties to the great conflict, and, when violated by one party, they could not reasonably be deemed to restrain the other belligerents. So, the world went on for several years without much reference to them; and the question now is: How far do they exist? In many ways the conditions which gave rise to these rules have been materially changed. The new modes of conducting war under which practically entire peoples are mobilized either for combat or supply have apparently destroyed the distinction between enemy forces and non-combatant citizens, so that the differences which underlie the law of contraband disappear. The whole people would seem to be an enemy force, and all goods destined for their use would appear to be contraband. The historic declaration of Paris that "the neutral flag covers enemy goods with the exception of contraband of war" and that "neutral goods with the exception of contraband of war are not liable to capture under the enemy's flag" would seem to have been swallowed by the exception, and the doctrine that "free ships make free goods" and that "blockades in order to be binding must be effective" appear to have become idle phrases. The submarine, the Zeppelin and the airplane, wireless telegraphy, the newly achieved destructive power of high explosives and of poisonous gases, have created conditions affecting both belligerents and neutrals not contemplated when the old rules were established, and in many respects the old rules are not adapted to deal with the new conditions.

More important still is a fact which threatens the foundation of all international law. The doctrine of *kriegsraison* has not been destroyed. It was asserted by Bethman Hollweg at the beginning of the war when he sought to justify the plain and acacknowledged violation of international law in the invasion of Belgium upon the ground of military necessity. The doctrine practically is that if a belligerent deems it necessary for the success of its military operations to violate a rule of international law, the violation is permissible. As the belligerent is to be the sole judge of the necessity, the doctrine really is that a belligerent may violate the law or repudiate it or ignore it whenever that is deemed to be for its military advantage. The alleged necessity in the case of the German invasion of Belgium was simply that Belgium was deemed to be the most advantageous avenue through which to attack France. Of course, if that doctrine is to be maintained, there is no more international law, for the doctrine can not be confined to the laws specifically relating to war on land and sea. With a nation at liberty to declare war, there are few rules of peaceful intercourse, the violation of which may not be alleged to have some possible bearing upon a military advantage, and a law which may rightfully be set aside by those whom it is intended to restrain is no law at all.

The doctrine has not been abandoned. It was formally and authoritatively declared by the German Government and acted upon throughout the war. We can find no ground to justify the conclusion that a plainly unrepentant Germany does not still maintain the soundness of the doctrine as a part of its historic justification, nor has there been any renunciation by the allies of Germany. We must, therefore, face the fact that the law which during the course of three centuries had

*A revision of an address of Hon. Elihu Root before the American Society of International Law, April 27, 1921.

become apparently firmly established upon the universal acceptance and consent of all the members of the community of civilized nations is shaken to its foundation by the repudiation of its moral obligation on the part of the four Central Powers — Germany, Austria-Hungary, Turkey, and Bulgaria, which at the outbreak of the war had over 144,000,000 inhabitants.

Few more futile public performances can be found in the history of international intercourse than the long diplomatic discussions which accompanied the earlier year of the war between neutral nations and Germany, about the rules of international law and their application to the conduct of Germany's military and naval proceedings, while Germany had already publicly declared that she would not deem herself bound by any rules she found to be disadvantageous to herself. The same will be true in the future if the same condition exists. It will be impossible to maintain the restraint upon national conduct afforded by the rules of international law so long as so great a part of the civilized world asserts the right to disregard those rules whenever it sees fit. Either the doctrine of *kriegsraison* must be abandoned definitely and finally, or there is an end of international law, and in its place will be left a world without law, in which alliances of some nations to the extent of their power enforce their ideas of suitable conduct upon other nations.

Another threatening obstacle to international law exists in the rapid development of Internationalism. This is presented by the avowed purposes of the Third Internationale aiming at the destruction of national governments and the universal empire of the proletariat; by the fact that the brutal and cruel despotisms of Lenin and his associated group has been able to maintain its ascendency over the vast territory and population of Russia, calling itself a dictatorship of the proletariat but making itself a dictatorship over the proletariat as well as all other classes, and ruling in the name of a world revolution for the accomplishment of the purposes of the Third Internationale. It is presented also by the universal propaganda carried on with almost religious fervor in all countries and seriously affecting the leadership of labor in many countries. That propaganda, exceedingly subtle and ingenious, through the world has toppled over the wits of parlor Socialists from their insecure foundations of education superior to their intelligence, and is making them the unconscious agents of promoting political principles which they would abhor if they understood them and in aiding sinister projects for profit in which they personally have no part. The organization of the civilized world in nations is confronted since the war with a vigorous and to some degree prevailing assertion that a much better organization would be that of government by class existing in all nations and superior to all.

International law, of course, is based upon the existence of nations. There is no common ground upon which one can discuss the obligations of international law with the Third Internationale, and just so far as the ideas of Lenin and Trotsky influence the people of a civilized country just so far the government of that country is weakened in the performance of its international obligations.

The existence of nations is not an accident of locality or of language or of race. It is one phase of the struggle of mankind for liberty. The independence of nations is an assertion of the rights of different groups of men having in the main different customs, traditions, habits of thought and action, ideas of propriety and of right, to have local self-government. This is true whatever the form of government; whether it be a monarchy or an aristocracy permitted by the peo-

ple of the country or a republic in which rulers are elected by the people, the distinction is the same between government in accordance with the people's own conceptions of right and propriety and government by an alien force having different and incongruous conceptions. There are few more injurious influences in international affairs than the inability of the people of one country to understand or to realize the differences between themselves and the people of other countries in fundamental and often unexpressed preconceptions. These differences affect the understanding in the different countries of every act done and every word used. They are not matters of reason to be solved intellectually like a problem of Euclid. They are the results of long ages of tradition, modes and habits of thought, inherited assumptions regarding the conduct of life. One race of men take off their shoes and keep on their hats, another race take off their hats and keep on their shoes under similar conditions to express similar sentiments of respect. To the people of one country polyandry is the natural social organization, to the people of another polygamy, and to the people of others monogamy is natural and appropriate. The people of some countries consider that justice is best attained by applying a system of excluding evidence according to rigid rules of relevancy and competency, while the people of other equally civilized countries consider that the same result may be best attained by admitting in evidence anything that anybody chooses to say on the subject. None of these differences is the result of the working out of problems by pure reason. They come from the fact that peoples of different countries and of different races do not think alike and cannot think alike, because their intellectual processes are the resultants of different traditional conceptions combined with the apparent logical premises of each problem.

The most grinding, possible tyranny is to be found in the intimate control of a people by other races or rulers who do not understand the people whom they rule. The vice of tyranny is so widespread, the tendency to tyrannize over others is so universal, especially among those who think themselves better than others, that only the highest intelligence creates exceptions to the rule of oppression in alien control. The declaration of the independence of nations, large and small, is an assertion of the right to be free from the oppression of alien control. Internationalism would fasten that oppression upon the world without recourse.

The fundamental ideas of international law are, first that each nation has a right to live according to its own conceptions of life; second, that each national right is subject to the equal identical right of every other nation. International law is the application of these principles through accepted rules of national action adapted to govern the conduct of nations toward each other in the contacts of modern civilization. Internationalism, by destroying the authority and responsibility of nations and the law which is designed to control their conduct toward each other would destroy the most necessary bulwark of human liberty, the chief protection of the weak against the physical force of the strong, and substitute the universal control which the nature of men will make an inevitable tyranny.

The long, slow process of civilization with its peaceful attrition between individuals and between local and tribal groups tends towards the steady enlargement of nations through the reconciliation of ideas and the adoption of common standards, making it easy for different groups to live together under the same government. Every great country shows the results of this process. Burgundy, Provence and Brittany, Wessex, Sussex, and Northumbria, Wales, England and

Scotland, Piedmont and Naples have come to live peaceably together under governments in which each has a voice and in which each is understood. But that process cannot be forced any more than the growth of a tree can be forced. It can be promoted as the growth of a tree can be promoted. The parliament of man may come just as the parliaments of Britain and France and Italy have come, but it must be by growth and not by force nor by the false pretense of agreement where there is no real agreement, nor by international majorities overbearing minority nations through majority votes.

The great force of Russia which aims to impose internationalism upon the world, therefore, halts the development of international law, the very foundations of which the existing government of Russia now repudiates. As the basis of international law is universal acceptance, either Russia must be excluded from the category of civilized nations or the law must wait upon the downfall of the present regime in Russia. In the meantime, every act which tends to support that regime, whether for sentiment or for trade, is a hindrance to the restoration of law and the rule of international justice.

Under these circumstances, how are we to take up the task of promoting the development of the Law of Nations? The task cannot be abandoned. The process which owes its impulse towards systematic development to Grotius and the horrors of the Thirty Years' War cannot be abandoned. Never before was the need so great. The multitudes of citizens who now control the national governments of modern democracies and direct international policies cannot safely follow the passion of the moment or the idiosyncrasy of the individual public officer in their international affairs, without accepted principles and rules of action, without declared standards of conduct, without definition of rights, without prescription of duties too clear to be ignored. Otherwise the world reverts to chaos and savagery.

To determine how this Society and its members may be effective in efforts to promote the development and authority of international law, some further examination of the existing international situation will be useful. The armistice of November 11, 1918, left for the successful Allied Powers two quite distinct and in some respects incongruous tasks. The first task was to decide upon the terms of peace and to require compliance with those terms. That was a matter of power, of force. It was the imposition of the will of the conquerors upon the conquered. Only the belligerent nations were concerned in it. It was a part of the war. Disarmament, reparation, disposition of conquered colonies, transfers of territory, were to be dictated as alternatives to further military punishment by the successful armies and navies. It was to be affected by the principles of reward for assistance in winning the war, of penalty for offenses against civilization in beginning and carrying on the war and by treaties between the belligerents.

The second task in necessary sequence was to give effect to the universal desire of the civilized world by bringing all civilized nations into agreement for the future preservation of peace. That was a matter, not of force, but of reason, humanity, universal instinct of self-preservation. It must be voluntary, not compulsory. It was the concern of all neutral nations equally with all belligerent nations. It presupposed a world at peace in which peace, already attained, was to be preserved. It was to follow, not to be a part of, the compulsions of conquest.

The Versailles Conference undertook to include both of these separate, distinct and incongruous processes in the same treaty. They framed a League of Nations for the future, they invited all neutrals to join and at the same time and in

the same instrument they undertook to impose penalties to which they required the defeated belligerents to submit. The defeated belligerents were not admitted to the League and had nothing to say about it, while the neutral members of the League naturally had no right or authority respecting the terms of peace imposed by the treaty. The two processes were tied together, however, by provisions making the League of Nations the agent of the conquerors to see to the execution of the terms imposed upon the other defeated nations. Thus certain powers were vested in the League including neutrals, regarding the administration of occupied territory, plebiscites, scrutiny of government under mandates. These functions plainly were to be in exercise of derivative not original authority of the League, which became a mere agent of the belligerents for those purposes. Spain, Holland, Norway, for example, and any organization which represents them can have no authority regarding a plebiscite in Silesia or the government of Danzig, except within the limits of a specific agency created by the nations which had a right won by conquest or created by treaty between such nations and Germany.

Another peculiarity of the treaty was that, although it contemplated the participation of all the belligerents, it was expressly made separable, by the provision that it should take effect when ratified by any three of the principal Powers. Accordingly, when the other principal Powers ratified the treaty and the United States refused to do so, the terms of peace became binding between Germany and the ratifying Powers, although not between Germany and the United States. And the League of Nations, no longer a mere project, came into being and still exists, uniting for specified purposes substantially all the civilized countries except the United States, Germany, Russia, Austria-Hungary and Turkey.

The natural tendency of these arrangements and the discussion and controversy which they engendered was towards great delay and confusion. The imposition of terms of peace was a matter calling for prompt decision and compliance while the conquering armies were in being and able to compel compliance. Under the distractions and discussions incident to the formation of a League for future peace, this vital process of closing the war dragged along until the Western armies had mainly disappeared; and many of the issues of the war have passed in to a new and prolonged stage of discussion.

In the meantime, the Supreme Council of the belligerents, in which the United States continued entitled to a place which she ceased to fill, has held the center of the international stage trying to bring about the state of peace which the League of Nations was formed to preserve, and at the same time the League has been struggling with its special agency under the treaty without ever having been put by its principals in the position of recognized authority; and the organization for future peace has remained incomplete in the face of continual actual war involving a majority of the people of Europe and the Near East.

In considering our course as students, lawyers, American citizens, united by common interest in the Law of Nations, I think we must assume that the conditions which I have described are temporary; that before very long the immediate issues of the war will be settled for the time being and peace will be restored; that republican Germany and her associates will abandon the arrogant assertion of the *kriegsraison;* that the brutal and cruel despotism which now oppresses the people of Russia will meet the fate which awaits the violation of economic laws and, failing to be rescued by those friends who are coming to its assistance

in this and other countries, will fall, and the people of Russia will come to their own.

When these results have been reached, there will remain the hindrances of differing forms and methods favored by the nations within and the nations without the existing League. But the idea that by agreeing at this time to a formula the nations can forever after be united in preventing war by making war seems practically to have been abandoned; and the remaining differences are not of substance and ought not to prevent the general desire of the civilized world from giving permanent form to institutions to prevent further war. In the long run, from the standpoint of the international lawyer, it does not much matter whether the substance of such institutions is reached by amending an existing agreement or by making a new agreement.

The necessary things are that there shall be institutions adapted to make effective the general civilized public opinion in favor of peace, and that these institutions shall be developed naturally from the customs, the habits of thought and action, and the standards of conduct in which civilized nations agree, and that they shall be of such a nature that the habit of recourse to them will have an educational effect and be a means of growth in justice and humanity.

The Covenant of the League, under which so many nations are now included, commits its members fully to these fundamentals, and, while it undertakes to go farther and do too much, the evident tendency of its members is to reduce this excess by interpretation and amendment and bring it down to the character of real representation of the common customs and common opinions of civilized peoples in favor of peace.

On the other hand, the United States is certain to be ready to join in some form, in seeking the same result by these same essential methods. That will follow necessarily from the traditional policy of our country and the responsible declarations of our government in both the legislative and the executive branches.

Considering this field of preventive provisions as separate and distinct from the temporary exigencies of compulsory war settlements, if we examine both the League agreement and the declared policy of the United States for information as to common purposes, we shall find several different kinds of united action upon which there is practically agreement in principle, with difference only in degree or as to specific means.

We may pass over, as least important, although extremely useful, provisions for international co-operation in administrative services to facilitate trade and intercourse, or to apply regulations by common consent in matters of common interest. The International Postal Union, the control of wireless telegraphy, the ice patrol of the North Atlantic for the safety of the ships of all nations, are examples of this kind of co-operation. The labor provisions of the Treaty of Versailles come under the same head, although they were put into the treaty without the discussion and consideration necessary to ascertain whether they ought to be adopted or whether they met a general demand or were adapted to world conditions. Much of the time of the League organization has been devoted to matters of this character, which are really local, affecting particular groups of countries and which would be arranged, naturally and probably better, between the countries concerned, without burdening or involving the countries not concerned.

Most important for dealing with immediate danger to international peace is a system of international conferences upon questions of international policy. This is a natural growth from experience. The Algeciras Conference is a type. The Conference in London, which limited the ef-

fect of the Balkan wars, is another. It is a general belief that if Sir Edward Grey had secured the conference he sought in July, 1914, the war would have been averted. Whether it be by dispelling misunderstandings, allaying fears, soothing irritation, or by the repressive effect of general adverse opinion, a formal general conference of the principal nations ordinarily leads to a situation in which it is extremely difficult for any nation to begin war.

The weakness of the practice hitherto has been in the fact that no one had a right to insist upon a conference; no one was under obligation to attend a conference. The step in advance plainly indicated as the natural development of this most useful practice into a systematic institution, is to establish an administrative agency whose duty it shall be to call such a conference in time of threatened danger on suitable request, and to place all nations under obligation to attend the conference when called. Upon the substance of this there is no disagreement. The Council of the League does this and something more, and the difference is over the something more. The Council of the League is a perpetual, permanent conference, as distinguished from conferences *ad hoc*, to be called automatically whenever grave cause arises. No one seems to question that in one way or another there should be obligatory conferences.

Such conferences, however, deal with policy in particular exigencies, and they proceed upon motives of expediency. They are not steps in the development of the rule of right among nations. In that direction also, however, we find elements of general agreement.

The Covenant of the League of Nations in its preamble states one of its objects to be "in order to promote international co-operation and to achieve international peace and security * * * by the firm establishment of the understandings of international law as the actual rule of conduct among governments"; and in the 14th article it provides: "The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice."

The American Congress in a statute enacted August 29, 1916, expressed the American view in the most solemn form. The statute says:

"It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. * * * In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe, all the great governments of the world to send representatives to a conference which shall be charged with the duty of formulating a plan for a court of arbitration or other tribunal, to which disputed questions between nations shall be referred for adjudication and peaceful settlement."

The message of the President of the United States to Congress on the 12th of April, said:

"The American aspiration, indeed the world aspiration, was an association of nations based upon the application of justice and right, binding us in conference and cooperation for the prevention of war and pointing the way to a higher civilization and international fraternity in which all the world might share. * * * In the national referendum to which I have adverted, we pledged our efforts towards such an association, and the pledge will be faithfully kept."

The pledge to which the President plainly referred in the paragraph just quoted, was contained in the Republican Platform, in these words:

"The Republican party stands for agreement among the nations to preserve the peace of the world. We believe that such an international association must be based upon international justice, and must provide methods which shall maintain the rule of public right by the development of law and the decision of impartial courts, and which shall secure instant and general international conference whenever peace shall

be threatened by political action, so that the nations pledged to do and insist upon what is just and fair may exercise their influence and power for the prevention of war."

While this pledge was in the platform of one party, it was not, in fact, the subject of party controversy, and the enormous majority of over seven million votes given to the candidate standing by that platform justifies the assertion that these words state the true attitude of the American people, as that attitude is now certified in the passage which I have quoted from the President's message to Congress.

It is apparent that the attitude of the League and the attitude of America toward this subject do not differ in substance, however much they may differ as to the specific modes of effectuating the common purpose.

The duty imposed upon the Council of the League, "to formulate and submit plans for the establishment of a permanent court of international justice," has been performed, and a convention establishing such a court has been adopted by the League and has already been ratified by many of its members. It provides for a permanent court of judges elected for fixed periods, paid fixed salaries, engaging in no other occupation, and bound to proceed under an oath which imposes upon them judicial obligation as distinguished from a sense of diplomatic obligation. To this court all nations may repair for the adjudication of their differences.

So much for the nations in the League. It is also true that this court is in substance, in everything essential to its character and function, the same court which under Mr. Roosevelt's administration was urged by the United States upon the Second Conference at The Hague in 1907, and which, at the instance of the United States, was provided for in subsequent treaties between the United States and the principal European Powers, negotiated under Mr. Knox as Secretary of State in Mr. Taft's administration, but not finally consummated when the war intervened.

Here plainly there is agreement in substance, and the difficulties are formal.

The technical commission which in the summer of 1920 drafted the plan for a permanent court that has been adopted by the League, accompanied the plan by a unanimous recommendation as follows:

"The Advisory Committee of Jurists, assembled in the Hague to draft a plan for a Permanent Court of International Justice.

"Convinced that the security of states and the well-being of peoples urgently require the extension of the empire of law and the development of all international agencies for the administration of justice, "Recommends:

"I. That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes:

"1. To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

"2. To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

"3. To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

"4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

"II. That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Association, and the Iberian Institute of Comparative Law be invited to prepare with such conference or collaboration *inter sese* as they may deem useful, projects for the work of the Conference to be submitted beforehand to the several governments and laid before the Conference for its consideration and such action as it may find suitable.

"III. That the Conference be named Conference for the Advancement of International Law.

"IV. That this conference be followed by further successive conferences at stated intervals to continue the work left unfinished."

Plainly, these recommendations cannot receive effect now, nor until the present emergencies of an unsettled war have been disposed of. But when the time comes, they will point the way to the performance of the object of the League "for the firm establishment of the understandings of international law," and the identical purpose of the people of the United States, so often declared by their representatives.

It is to be observed that these two—the establishment of a permanent court and the restoration of the authority of international law—are cor-relative parts of the same world policy, upon the substance of which the civilized nations are in agreement.

There can be no real court without law to control its judges, and there can be no effective law without institutions for its application to concrete cases. This is the traditional policy of the United States—to establish and extend the law declaring the rules of right conduct accepted by the common judgment of civilization and to substitute in international controversies upon conflicting claims of right impartial judgment under the law in the place of war.

The existing situation presents difficulties and embarrassments in arriving at a common understanding regarding the precise modes in which this general policy shall receive effect; but I, for one, am not willing to assume that the patience and good sense of the diplomacy of the world, including our own country, will be unequal to the task of so disposing of the formal difficulties as to achieve the great object upon which all are agreed.

It is further to be observed that conference upon matters of policy, either permanent or occasional, on the one hand, and the establishment of law and judicial disposal of questions of right, on the other hand, are not alternative and opposing methods. They are mutually supplemental parts of one and the same scheme to prevent war. Both are methods of bringing the public opinion of the world to bear upon the settlement of controversies. Neither covers the field without the other. Never before has there been such evidence of the power of public opinion as has been afforded by the vast propaganda through which the contending nations in the great war have tried their cases at the bar of public judgment of the world, and have sought to commend their conduct to the peoples of other nations.

The idea that any formula can be devised under the working of which the world can be made peaceable by compulsion, is manifestly in course of abandonment. The public opinion of mankind is so mighty a force, that it is competent to control the conduct of individuals. But it must be an intelligent, informed and disciplined opinion. The exit of autocracies leaves the direction of foreign relations under the ultimate control of multitudinous, ill-informed and untrained democracies. In place of dynastic ambitions, the danger of war is now to be found in popular misunderstandings and resentments.

How are these vast democracies to be justly informed as to the rights and wrongs of controversies, and the fairness of policies? It seldom happens that the great multitude of citizens can argue out from first principles the complicated and difficult questions of right and wrong involved in international relations. It seldom happens that the subject is not obscured by misinformation and misleading suggestion, and by appeals to passion rather than to judgment. The only mode of meeting this great and vital need, dictated by reason and approved by experi-

ence, is the establishment of institutions through which, when strife is not flagrant, the deliberate and unbiased opinion of mankind may declare and agree upon the rules of conduct which we call law, by which in times of excitement judgment may be guided, and by which the peoples may be informed of the limits of their rights and the demands of their duties; and by the establishment of institutions through which disputed facts may be determined and false appearance and misinformation may be stripped away and the truth be made known to the good and peaceful peoples of the world by the judgment of impartial and respected tribunals. In such institutions rests the possibility of growth of development for civilization. Through them may be established by usage the habit of respecting law. They may create standards of conduct under which the thoughts of peoples in controversy will turn habitually to the demonstration of the justice of their position by proof and reason, rather than by threats of violence, so that the time will come when a nation will know that it is discredited by the refusal to maintain the justness of its cause by the procedure of justice.

This is the work of international law, applied by an international court. The process will be slow, but all advance of civilization is slow. Not what ultimate object we can attain in our short lives, but what tendencies towards higher standards of conduct in the world we can aid during our generation, is the test that determines our duty of service. The conditions which will hinder and delay effective action for the re-establishment of law are many and serious, but we must prepare. When the time for action comes, it must find the results of study, discussion and matured thought ready, as material for authoritative judgment by the nations, and, meantime, the voice of the least of us may be of some avail, urging that force be repressed and expediency be guided by the public opinion of the world made effective by declared and accepted rules of public right applied by competent and impartial international tribunals.

ELIHU ROOT.

New York, N. Y.

CORPORATIONS—RIGHT OF STOCKHOLDER TO NEW STOCK.

HOYT v. GREAT AMERICAN INS. CO.

188 N. Y. S. 257.

(Supreme Court, Special Term, New York County. March, 1921.)

An old stockholder has a vested right to take his proportionate share of new or increased stock at par, in the absence of laches or acquiescence.

DONNELLY, J. Demurrer by plaintiff to defendant's affirmative defense to the first cause of action set forth in complaint. This cause of action sets forth a claim for damages against the defendant in the sum of $8,662.50, arising out of the alleged failure of the defendant to give the plaintiff, or her testator, who was the holder of record of 35 shares of the capital stock of the defendant, a reasonable opportunity to subscribe to a proportionate amount of its increased capital stock. The complaint alleges the holding of a special meeting of the stockholders on October 24, 1918, at which the stock was increased from $2,000,000 to $5,000,000, and a resolution was passed authorizing the defendant's directors to offer the increased stock to its stockholders pro rata at $150 per share, payable in cash, and that the defendant, pursuant to such resolution, made an offer to its stockholders on or about November 4, 1918, and that the proportionate amount of the increased stock to which plaintiff's testator was entitled to subscribe, by reason of his ownership of 35 shares, was 52½ shares. It is also alleged that plaintiff's testator died on November 10, 1918, and that letters testamentary were issued to plaintiff on December 11, 1918; that the testator and his representatives were at all times ready, willing, and able to subscribe for the said 52½ shares of increased stock, which was worth greatly in excess of the subscription price of $150 a share, but that the defendant failed to give the plaintiff's testator and his

legal representatives a reasonable opportunity to subscribe to the same, and in violation of their rights disposed of said 52½ shares on or about December 15, 1918, to its directors, or some of them. It is also alleged in article sixth on information and belief that the plaintiff's testator received no advance notice of the stockholders' meeting held on October 24, 1918, and had no knowledge that the meeting was being held, and that no advance notice of the meeting was given or sent to him at his last known post office address.

The answer, in addition to denials of various allegations of the complaint, contains a separate affirmative defense to the first cause of action, in which there are no denials, and which, among other things, allege as follows:

"On or about October 24, 1918, the capital stock of the defendant was duly increased from $2,000,000, divided into 20,000 shares, of the par value of $100 each, to $5,000,000, divided into 50,000 shares, of the par value of $100 each, pursuant to a resolution duly adopted by more than a majority of the stockholders of the defendant, at a meeting of the stockholders duly held on October 24, 1918. A copy of the notice of said meeting, stating the purpose thereof, was inclosed in a sealed, postpaid envelope, addressed to Albert Sherman Hoyt, Post Office Box 250, Yokohama, Japan, which was the address of the said Albert Sherman Hoyt appearing on the books of the defendant, and the last address which he had furnished it, and was his last address known to the defendant, and was duly mailed on or about October 7, 1918. Accompanying the said notice was a circular letter to the defendant's stockholders, stating the reasons for the said increase of its capital stock, and that it was of great importance to have all the new stock issued and paid for before the end of the year 1918, and further stating that the new stock would be issued to the stockholders, in proportion to their holdings, at $150 a share, and that one-half of the purchase price would be called for in about 30 days from the time of the increase, and the remaining one-half in about 60 days. * * * At the times hereinbefore mentioned and for some time prior thereto, the defendant had, pursuant to authorization from the said Albert Sherman Hoyt, sent checks for dividends on the stock standing in his name to the Title Guarantee & Trust Company, 175 Remsen street, Brooklyn, New York, and knowing that there would not be time for the said Albert Sherman Hoyt to exercise his right to subscribe for a proportionate part of the increased stock within the time fixed for the stockholders, if the subscription warrant were sent to him at his registered address in Japan, above mentioned, the defendant sent a copy of said letter of October 25, 1918, to the said Title Guarantee & Trust Company, with a letter inquiring whether it was authorized to take any action in connection with the said subscription rights on the said stock standing in the name of Albert Sherman Hoyt. In reply to the said letter the Title Guarantee & Trust Company informed the defendant that the said Albert Sherman Hoyt had returned to America, and that his counsel in New York City, who attended to all his personal business affairs, were Steele & Otis, 25 Broad street, New York City, and that the matter should be taken up with them. The defendant fully believed that the said Steele & Otis did have charge of the personal business affairs of the said Albert Sherman Hoyt, and it accordingly sent the subscription warrants, covering the rights on the said stock standing in the name of the said Albert Sherman Hoyt, to the said Steele & Otis, on or about November 4, 1918, and asked them for instructions in regard to the exercise of the said rights, but the defendant received no instructions from them."

It is conceded by both parties that it is the law of this state that an old stockholder has a vested right to take his proportionate share of the new or increased stock at par, in the absence of laches or acquiescence. It is likewise conceded that a majority of the old stockholders have a right to fix reasonable conditions and regulations concerning an increase of stock, particularly as to time. Stokes v. Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090, 12 L. R. A. (N. S.) 969, 9 Ann. Cas. 738; Sommer v. Armor Gas & Oil Co., 71 Misc. Rep. 211, 128 N. Y. Supp. 382.

The only question, therefore, presented by this demurrer, is whether or not a reasonable notice, or any notice whatever, of the right of the plaintiff's testator to subscribe to his proportionate share of the increased stock was ever given. It appears from paragraph 1 of the separate defense that the address of plaintiff's testator appearing on the books of the defendant was "Post Office Box 250, Yokohama, Japan." It is not alleged that any such notice was mailed to said address, or any other address specifically authorized or designated by plaintiff's testator; but in lieu thereof an excuse for not sending such a notice is set forth in paragraph 3 of said separate defense.

Stockholders are entitled to a reasonable time in which to subscribe. A reasonable time was not given to the plaintiff's testator; in fact, no time at all was given to him, as it appears on the face of the separate defense that no notice whatever was sent to him, and the facts set forth in lieu thereof do not constitute laches or waiver, within the meaning of Sommer v. Armor Gas & Oil Co., supra.

Demurrer sustained, with $10 costs.

NOTE.—*Right of Stockholder to Subscribe to New Issue of Stock.*—Upon an increase in capital stock of a corporation, a stockholder is entitled to maintain his proportionate influence, and for that reason must be given an opportunity to purchase a proportionate amount of the new shares before they can be offered to outsiders.

Kingston v. Home Life Ins. Co., Del., 101 Atl. 898; Hammer v. Cash, Wis., 178 N. W. 465.

However, an issue of new stock may be upon such terms as is voted by the stockholders within the scope of legislative sanction, and accordingly stockholders may surrender or be deprived of their right to subscribe to new stock. Brown v. Boston & M. R. Co., Mass., 124 N. E. 322.

Where an increase in the capital stock of a railroad was authorized by amendment of its articles of incorporation for the purpose of building an extension, and it was provided that stock not necessary to be sold should be held, a stockholder is not entitled under the amendment to purchase a proportionate number of new shares and, the extension being abandoned, an issue of new stock to the president, who was a shareholder, was unlawful. Hammer v. Cash, Wis., 178 N. W. 465.

The directors of a corporation cannot vote a new issue of stock and subscribe for it themselves, without giving the stockholders generally an opportunity to subscribe in proportion to their existing holdings. Glenn v. Kittanning Brewing Company, 259 Pa. 510; 103 Atlantic 340. There is a valuable note appended to this case in L. R. A. 1918 D, 741.

One who acquires corporate stock without knowledge that the corporation had previously given third person exclusive right to subscribe to corporate stock to be thereafter issued, cannot attack such contract. Kingston v. Home Life Ins. Co., 101 Atl. 898.

A stockholder who is entitled to a share of an increase of stock saves his rights by protesting against the sale of it to another, without making a demand for his stock and tender of the price. Stokes v. Continental Trust Company, 186 N. Y. 285; 78 N, E. 1090, 12 L. R. A. (N. S.) 969.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM OF THE MEETING OF THE SOUTH DAKOTA BAR ASSOCIATION.

The twenty-second annual meeting of the South Dakota Bar Association will be held at Watertown, August 3 and 4, 1921.

The annual address of the President will be made by Mr. Claude L. Jones, of Parker. The annual address will be made by Mr. Robert L. Stewart, of Chicago. Other addresses will be made by the following: "Economic and Juridicial Consideration of Hydo-Electrics, apropos Chapter 257, Laws 1921," by Mr. William M. Potts, of Mobridge; "Small Claims Court Procedure," by Hon. John Howard Gates, of the Supreme Court of South Dakota; "The Tendencies of Our Profession," by Mr. George Philip, of Rapid City; "The Bench and the Bible," by Mr. James Brown, of Chamberlain.

Following the afternoon session on Thursday, there will be an excursion on Lake Kampesa, and in the evening the annual dinner will be given at the Country Club.

HUMOR OF THE LAW.

When young he seemed quite promising,
Did little Willie Thomas,
And, true to form, he grew up and
Was sued for breach of promise.

Scene, a South Carolina courthouse. Judge, Irish. Prisoner, Irish. Accuser, a six-foot negro whose jaw bone had been broken by the Irish fireman.

"And you say this perfectly respectable sailor broke your jaw without you ever having spoken to him, and you a complete stranger?" "Yes, judge; ah was just sitting on a stone pile takin' the sun when this man struck me full on the jaw." "But you must have done something?" "No, judge; ah was just sittin' in the sun." "But why should this perfectly decent stranger break your jaw if you were just sitting in the sun?"

"Beats me, judge. Ah don't know; ah was just sittin' in the sun singing when—"

"Ah, singing," says the judge; "what were you singing?"

"Ah was just humming 'Sure Ireland must be heaven, for me mudder came from dere'."

The following letter was received by a wholesale merchant from a country merchant:

Dear Sir:

I received your letter about what I owes you. *Now be pashent.* I ain't forgot you, and as folks pays me I'll pay you, but if this was judgment day and you was no more prepared to meet your God, than I am to meet your account, then you show would go to Hell.

Good by Bill Jones.

—*The Docket.*

"Sages tell us that the best way to get the most out of life is to fall in love with a great problem or a beautiful woman."

"Why not choose the latter and get both?"

Tommy: What does LL.D. after a man's name mean?

Jimmy: I guess it means that he's a lung and liver doctor.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adoption** — Collateral Attack.—When the adoptive parents obtain the decree they asked for and take the child into the family and treat it as their own, they and their heirs and personal representatives are estopped from asserting that the child was not legally adopted.—In re Reichel, Minn., 182 N. W. 517.

2. **Attorney and Client**—Contingent Fee. — Where attorneys were employed on a contingent fee of one-third of any recovery, a settlement by the client without their consent was not a breach of the agreement of retainer, and they were only entitled to one-third of the amount of the settlement.—Lefkowitz v. Leblang, N. Y., 187 N. Y. S. 520.

3. **Bankruptcy** — False Pretenses. — Under Bankruptcy Act, § 17a, as amended by Act Feb. 5, 1903, providing that a discharge does not release liabilities for obtaining property by false pretenses or false representations, a debt created by fraud or fraudulent misrepresentation is not affected by the discharge, and is not within the exclusive jurisdiction of the bankruptcy court.—M. C. Kiser Co. v. Gerald, Ala., 88 So. 49.

4.——Operation of Bankruptcy Suit.—A suit instituted under the Bankruptcy Law to have a citizen declared a bankrupt takes out of the hands of his creditors the ordinary remedial processes, suspends the ordinary right to sue which the creditor has, and puts in place thereof a new and comprehensive remedy for the creditor designed for the benefit of all creditors; the term "bankruptcy" meaning the status of a person made subject of the application of a bankruptcy law.—Norin v. Scheidt Mfg. Co., Ill., 130 N. E. 791.

5.——Surrender Value of Life Insurance Policy.—Where a bankrupt's trustee has become owner, as an asset of the estate, of a policy of insurance on the bankrupt's life, having a surrender value, payable to bankrupt's wife as a beneficiary, but containing a provision that the insured could change the beneficiary "from time to time with the consent of the company by written notice to said company," provided, however, that "no other than the insured's estate, father, mother, husband, wife or dependent child will be made beneficiary under this policy," the company has no interest which can justify its refusal to pay the surrender value to the trustee.—In re Greenberg, U. S. C. C. A., 271 Fed. 258.

6. **Banks and Banking**—Lien on Deposit.—A bank has a lien on a deposit for the depositor's indebtedness to it, and may apply the deposit on the indebtedness.—Lebreicht v. New State Bank, Mo., 229 S. W. 285.

7. **Bills and Notes**—Good Faith.—In action on a note in which plaintiff claimed to be a purchaser for value before maturity and without notice of any defense, where there was no evidence to justify conclusion tnat plaintiff was guilty of bad faith, and where plaintiff knew maker by reputation, knew or believed that he was financially good, and purchased the note from a reputable citizen without being in any way brought into contact with the payee or the other indorsers except one who represented that the note was regular, the court properly pay the instrument according to the tenor of plaintiff bank had purchased note in good faith, and declared it a good-faith purchaser as a matter of law.—Farmers' State Bank v. Betcher, Wash., 197 Pac. 15.

8.——Liability of Acceptor.—Under Negotiable Instruments Law, § 112, providing that the acceptor by his acceptance engages that he will took from the jury the question of whether his acceptance, and admits the existence of the drawer, the genuineness of his signature, his authority to draw, the existence of the payee, and his then capacity to indorse, an acceptance gives a draft the effect of a promissory note; the acceptor being liable as maker and the drawer as first indorser.—Anglo & London-Paris Nat. Bank v. S. A. Jacobson Co., N. Y., 187 N. Y. S. 508.

9.——Place of Signature.—In view of Acts 1909, § 126, defining a bill of exchange, an averment that a bill of exchange was drawn by defendant is under Code 1907, § 5382, subd. 3, equivalent to an averment that it was signed by defendant, and has the same effect as an allegation under subd. 1 that the note was "made" by defendant.—Knox v. Rivers Bros., Ala., 88 So. 33.

10.——Transfer to Maker.—Under Rev. Code 1919, § 1822, subd. 5, declaring a negotiable instrument discharged when the principal debtor becomes the holder thereof after maturity in his own right, the obligation on a note and check of the maker there of is extinguished where after they are overdue one holding them as collateral for the debt of another transfers them to such maker under the guise of a sale to him of such debt with a transfer of the collateral.—Aulwes v. Farmers' Bank, S. D., 182 N. W. 528.

11. **Brokers** — Withdrawal of Principal. — Where R, to whom brokers were authorized to make an offer to exchange properties, had notice that the principal had withdrawn the offer, and one of the agents took him to view the property merely in the hope that he and the principal would come to an understanding, and, in accepting the offer, notwithstanding the withdrawal, R relied on a statement in the offer that it would not be revoked, and not on anything done by the agents, they were not liable for the principal's expenses in defending R's suit for specific performance.—Roth v. Moeller, Cal., 197 Pac. 62.

12. **Carriers of Goods**—Measure of Damages. —The measure of damages for loss of household goods by a carrier is their actual or reasonable value at destination at the time they should have been delivered, as distinguished from a fanciful or sentimental value, where the goods are secondhand and have no standard market value.—Hines v. Warden, Tex., 229 S. W. 957.

13. **Carriers of Passengers**—Degree of Care. —In action for death of prospective interurban car passenger, waiting for car at crossing which was not a regular stopping place, and at which the car stopped only on signal, when struck by freight car which had not stopped after answering signal by blasts of whistle signifying that it would not stop, the deceased as to such freight car was not a passenger within the rule as to degree of care required of railroad toward passengers.—Van Sickle v. Grand Rapids, G. H. & M. Ry. Co., Mich., 182 N. W. 132.

14.——Negligence.—In an action against a carrier for death of an intending passenger, struck and killed by one of its trains, held, that it could not be said as a matter of law that a speed of from 12 to 30 miles per hour on its own right-of-way in such case constituted negligence.—Washington. B. & A. E. Ry. Co. v. State, Md., 113 Atl. 338.

15.——Rates.—Where the United States requested a railroad company to furnish transportation for men in the military service, and accepted the service without arranging for a different or reduced rate, as it might under Inter state Commerce Act, § 9, it assented to and

became obligated to pay the established rate of the carrier under Act July 27, 1866, § 5, less any lawful land grant deduction, and it was error to determine this rate by combining the party rate covering a part only of the distance, and the individual rate for the remainder, and then making any deductions on account of land grants.—Atchison, T. & S. F. Ry. Co. v. United States, U. S. S. C., 41 Sup. Ct. 486.

16. **Commerce**—Posting of Bills on Billboards.—Assuming that the business of advertising solicitors in sending their customers' advertisements to be posted on billboards in various towns and cities throughout the country is, as between them and their customers, interstate commerce, after the posters arrive at destination, the posting of them by bill posters is a purely local service, only incidentally affecting interstate commerce, and rules of an association of bill posters, prohibiting its members from accepting work from solicitors not licensed by the association, regulating prices for bill posting and prohibiting licensed solicitors from employing other bill posters, do not violate Sherman Act.—Charles A. Ramsay Co. v. Associated Bill Posters of the United States and Canada, U. S. C. C. A., 271 Fed. 140.

17.——Taxation of Intangible Property. — A company, having by contract an exclusive right to operate an electric railroad over a bridge over the Mississippi River at St. Louis and having profitable operating arrangements with connecting street railway companies, whereby it has considerable earning capacity on a small extent of physical property, has intangible property other than its mere right to conduct interstate passenger traffic over the bridge, and a tax on such intangible property is not invalid as a direct tax and burden on the right to engage in interstate commerce.—St. Louis & E. St. L. Electric Ry. Co. v. State of Missouri, U. S. S. C., 41 Sup. Ct. 488.

18. **Contracts**—Effects of World War.—The court will take judicial notice of the conditions that attended the prosecution of the world war, and the effect of such conditions upon the country at large, and as affecting building and other construction activities generally.—Home Builders v. Busk, Neb., 182 N. W. 589.

19.——Partial Breach.—In a contract between plaintiff and defendant, who were competing theater proprietors, and a booking office whereby plaintiff's exclusive right to booking privileges of the office were transferred to defendant, and plaintiff promised to refrain from exhibiting vaudeville in his theater during the contract, and was to receive a stipulated weekly payment, the promise to refrain from the exhibition of vaudeville was not the sole consideration for the weekly payments, and hence a breach of such promise was a partial breach only.—Princess Amusement Co. v. Wells, U. S. C. C. A., 271 Fed. 226.

20.——Public Policy.—Contracts between a street car company and its employes, whereby they agreed not to join any labor union during the term of their service, not violating any provision of the state or federal constitution or statutes or any rule of the common law, are not contrary to "public policy," which means that principles of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good.—Nashville Ry. & Light Co. v. Lawson, Tenn., 229 S. W. 741.

21. **Corporations**—Cancellation of Stock. — Where buyer of stock contracted to become bound therefor only on its transfer on the books, and on turning it in for transfer the corporation cancelled it under order of the Charter Board, he never became its owner, and so far as he was concerned there was no conversion.—Lilley v. Sterling Oil & Refining Co., Kan., 197 Pac. 201.

22.——De Facto. — Where three individuals signed a certificate of incorporation two days before the happening of an accident for which the company was sued for damages, which certificate was recorded in the county clerk's office the day after the accident and filed in the secretary of state's office four days after the accident, and they did certain acts in attempted execution of the powers conferred by the certificate of incorporation, a jury was justified in finding that the company was, at the time of the accident, a corporation de facto, and therefore liable.—Frawley v. Tenafly Transp. Co., N. J., 113 Atl. 242.

23.——Libel by Controlled Company.—A publishing company, organized by a Socialist publishing company to serve as mouthpiece for the latter's propaganda, being a corporate entity until dissolved, is liable for its own libels, but the technical distinction of two distinct organizations cannot be invoked by the Socialist publishing company to defeat the cause of action against it on the part of a society libeled by the controlled publishing company, both publishing companies being jointly and severally responsible to the libeled society.—Finnish Temperance Soc. Sovittaja v. Publishing Co., Mass., 130 N. E. 845.

24. **Damages**—Breach of Contract.—In corporation's action for breach of contract to sell its stock, plaintiff could not recover items of costs incurred by it in a stock-selling campaign begun by it on its own account before abandonment by defendant broker, and, according to its own contention, undertaken with the consent of defendant, since these costs could not have been charged to defendant if it had performed its part of the contract.—Middendorf, Williams & Co. v. Alexander Milburn Co., Md., 113 Atl. 348.

25.——Destruction of Trees.—The measure of damages for the destruction of trees cannot be based solely upon the cost of their production to the time of such loss.—Watkins v. Mountain Home Co-operative Irr. Co., Idaho, 197 Pac. 247.

26. **Electricity**—Contract for Rates.—Where by ordinance a power company was given the use of the city streets, and, subject to a provision for maximum rates and for aritration, was given the right to charge for commercial light and power rates which it might fix, no amendment of the ordinance was required to permit it by contract to fix such rates for an agreed period, or to make a binding contract with the city to exercise its right to make charges in a certain way, nor would such a contract operate as an amendment of the ordinance.—City of Saginaw v. Consumers' Power Co., Mich., 182 N. W. 146.

27. **Explosives** — Negligence. — In action against an oil company for negligence in leaving oil barrels not completely emptied in the rear of a grocery store, where during a fire burning the store and other buildings the barrel exploded and injured plaintiff while assisting in extinguishing the fire, a directed verdict for defendant held proper, the evidence showing that defendant used the same method as other oil companies in delivering, emptying, and removing their oil barrels, and indicating that the drayman in charge of such delivery and removal by any method he saw fit to use was not defendant's agent or servant, but an independent contractor.—Williams v. Gulf Refining Co., Tex., 229 S. W. 959.

28. **Frauds, Statute of**—Authority of Auctioneer.—The authority of an auctioneer to sell land at auction must be in writing, and an auctioneer who is not authorized in writing cannot make a memorandum which will bind the owner of land sold under Civ. Code, § 1347, even though the owner of the land and his wife are present at the sale, in view of § 1238, subd. 5, requiring authority of agent to be in writing.—Corner v. O'Malley, S. D., 182 N. W. 530.

29. **Fraudulent Conveyances**—Sign Statute.—Conduct of business by bankrupt's wife with husband as manager without sign on building held not a violation of the Sign Statute.—Rubenstein v. Lynchburg Shoe Co., Miss., 88 So. 14.

30. **Garnishment** — Property Taken as Evidence.—Money or other property taken from prisoner at time of his arrest, upon belief that it is connected with the crime charged, or might be used by the prisoner in effecting his escape, is subject to garnishment in the hands of the officer, notwithstanding Gen. Laws 1909, c. 354, § 30, providing that such property shall be subject to the order of the court, in the absence of collusion between creditors and officers.—Fitzgerald v. Nickerson, R. I., 113 Atl. 290.

31. **Husband and Wife**—Separate Property.—Where a broker, when he secured husband and wife's contract to sell a lot, knew that it was then homestead and her separate property, the husband, who, although his wife refused to convey, was ready and willing to make conveyance as far as he could, was not liable in damages

to the broker for his wife's failure to carry out his undertaking.—Collett v. Harris, Tex., 229 S. W. 885.

32.——Unenforceable Note.—Where a husband executes a promissory note or promises to pay his wife to resume the performance of her marital duties, where she has abandoned the same, or to continue their performance, where she is threatening such abandonment, the note or agreement is without consideration and is not enforceable against the husband or his estate, unless at the time of the execution of said instrument or the making of such promise the wife was absolved from the discharge of such marital duties by reason of the wrongful conduct of the husband.—Bowers v. Alexandria Bank, Ind., 130 N. E. 808.

33. **Injunction**—Interfering with Lease. — Where hotel company, having been enjoined from intefering with lease of barber to whom it had given the exclusive right to operate barber shop in the hotel, leased a roon in the hotel to another barber, a petition by the holder of the prior lease to restrain the hotel company from permitting another barber shop to be maintained in the hotel, and to restrain the other barber from operating his shop in the hotel, was properly filed in the action in which the prior injunction was granted, instead of by original bill in separate proceeding.—Belvedere Hotel Co. v. Williams, Md., 113 Atl. 335.

34. **Insurance**—"Confined to Bed."—The provision of an industrial insurance policy for payment of sick benefits when insured is necessarily confined to bed does not mean that insured should be confined to her bed all of the time, but should be bedridden in a substantial sense, and insurer cannot escape paying sick benefits because insurer could not lie in bed owing to a bad heart.—North v. National Life & Accident Ins. Co. of Nashville, Tenn., Mo., 229 S. W. 298.

35.——Delivery of Policy.—Where an insurance company executed a policy and sent it to an agent in this state to be delivered when the insured furnished a health certificate by one of its examining physicians, but no such provisions were in the policy, but in a letter of instructions, and the agent delivered the policy without complying with the instructions, the delivery by the agent is the act of the company, under § 2615, Code 1906 (§ 5078, Hemingway's Code), and the policy is valid in the hands of the insured or his beneficiary, though no health certificate was furnished the agent or the company.—Mutual Life Ins. Co. v. Vaughan, Miss., 88 So. 11.

36.——Delivery of Policy.—In an action to recover on an insurance policy, the fact of delivery or nondelivery is an affirmative defense, and plaintiff, introducing the policy and proving the death of insured by external bodily injuries accidentally received, has made out a prima facie case.—Lafferty v. Kansas City Casualty Co., Mo., 229 S. W. 750.

37.——Mutual Mistake.—In respect to correcting a mutual mistake in reducing a contract of insurance to writing, a mutual insurance company is bound by the rules of equity and the principles of law applicable to other corporations and individuals.—Central Granaries Co. v. Nebraska Lumbermen's Mut. Ins. Ass'n, Neb., 182 N. W. 582.

38. **Intoxicating Liquors** — Admissibility of Evidence.—In a prosecution for the making of whisky, testimony of witness, to the effect that he had been to the place in question before, and found some beer there, was admissible in evidence, but reference by the witness to any other time he had been to the place in question prior to the time it was alleged defendant was found making whisky was not admissible, being relevant to show a preparation on the part of somebody to distill liquor and to identify the place at which the liquor was made.—Dozier v. State, Ala., 88 So. 54.

39.——Possession for Unlawful Purpose.—Mere finding of a large amount of wine in one's residence did not indicate an intention to keep such wine for sale, under Prohibition Act, §§ 5, 35.—Burzo v. State, Ind., 130 N. E. 796.

40.——State Statutes.—The statutes of the state in regard to the manufacture, sale and transportation of intoxicating liquors for beverage purposes were not repealed by the Eighteenth Amendment to the United States Constitution, whenever the enforcement of such legislation would aid in carrying into effect the provisions of the amendment.—State v. Hartley, S. C., 106 S. E. 766.

41. **Landlord and Tenant**—Agreed Service.—Laws N. Y. 1920, c. 951, making it a misdemeanor for a lessor or any agent or janitor intentionally to fail to furnish such water, heat, light, elevator, telephone, or other service as may be required by the terms of the lease and necessary to the proper or customary use of the building, does not violate Const. Amend. 13, since the services in question are not strictly personal services, but are analogous to services that under the old law might issue out of or be attached to land.—Marcus Brown Holding Co. v. Feldman, U. S. S. C., 41 Sup. Ct. 465.

42.——Damage to Crops.—It is not error to refuse an instruction that a lessee of meadow and pasture land could not recover damages for injury to an ensuing crop of grass, where there is competent evidence to support the lessee's claim of injury thereto.—Otey v. Midland Valley R. Co., Kan., 197 Pac. 203.

43.——Lien on Crops.—Though a landlord allowed his tenant to sell crops and deposit the rent to his credit, thus waiving his lien as to purchasers, the lien given by Vernon's Sayles' Ann. Civ. St. 1914, art. 5475 et seq., as amended by Laws 1915, c. 38, was not waived with respect to a judgment creditor of the tenant who levied on unsold crops.—Jarrell-Evans Dry Goods Co. v. Allen, Tex., 229 S. W. 920.

44.——Notice.—Where the petition of the landlord for removal of his tenant alleges all the facts required by Code Civ. Proc., § 2231, to give the court jurisdiction of the proceedings, the omission to allege that the landlord had given the tenant the notice required by Laws 1882, c. 303, as amended by Laws 1920, c. 209, does not defeat the court's jurisdiction, where it was alleged that the tenant notified the landlord he would surrender the premises at the end of the term, since the latter statute does not give the court any new jurisdiction, but merely states a condition precedent for the benefit of the tenant, which he waived by giving notice of his intention to remove.—A. N. P. Realty Co. v. Tunick, N. Y., 182 N. Y. S. 437.

45.——Ratification of Contract.—No ratification of the contract of tenancy can debar the tenant from interposing, under Laws 1920, cc. 944, 945, that the rent is unreasonable and oppressive.—B. & S. Realty Corporation v. Wald, N. Y., 187 N. Y. S. 436.

46.——Reasonable Rental.—A tenant is not entitled to a lower rental than would otherwise be reasonable merely because a landlord will obtain a fair return upon his whole investment through higher rates paid by other tenants, since no rental can be considered "reasonable" which is less than the amount which would be fixed by ordinary competition, and, in addition is less than would afford the landlord a fair return upon his investment, if applied to all the apartments in the same house.—Elvira Realty Co. v. Bracegirdle, N. Y., 187 N. Y. S. 519.

47. **Libel and Slander**—Counter-Claims.—Alleged slanders of defendant by plaintiff, whether spoken before or after the libel on which the complaint is based, do not constitute a justification for the libel, or amount to a defense to the action therefor.—Udovichky v. Bacheff, N. Y., 187 N. Y. S. 474.

48. **Licenses**—Shares of Unincorporated Association.—Shares into which capital of unincorporated association, organized under the common law, having a declaration of trust in favor of the association reported in the office of the register of deeds of the county, and for which certificates were issued, held "stock" within the Blue Sky Law, the association being an "investment company" within § 2, defining an "investment company" as any "person, corporation, copartnership, company, or association" not specifically exempted, organized, or to be organized, whether incorporated or unincorporated, which sells or negotiates for the sale of any stocks, bonds, or other securities issued by such person, corporation, copartnership, company, or association.—People v. Clum, Mich., 182 N. W. 136.

49. **Literary**—Property Same as Other Personalty.—An author has the same rights in his work as the owner of other personalty, and may sell the same outright, or dispose of it on such conditions or with such restrictions as he might

any other property.—Maurel v. Smith, U. S. C. C. A., 271 Fed. 211.

50. **Master and Servant**—Assumption of Risk.—It cannot be said as a matter of law that the danger of a belt with worn and frayed edges catching the bar with which an employe was shifting the belt, because of defects in a shifting device, and knocking the employe down, was apparent, and that the employe was aware of and appreciated the danger; and hence a complaint was not demurrable as showing assumption of risk.—Grandpre v. Chicago, M. & St. P. Ry. Co., S. D., 182 N. W. 527.

51.——Contributory Negligence.—In a coal miner's action for injuries from fall of rock from the roof of the mine after having been employed therein for less than two hours, where there was evidence that he was inexperienced, and that it was difficult for an inexperienced person to detect the dangerous character of the formation of the roof, the question of contributory negligence was for the jury.—Sullivan v. North Pratt Coal Co., Ala., 87 So. 805.

52.——Course of Employment.—Where a lumber company owned all the property around its sawmill and an employe riding homeward from his work on his velocipede on the company's tramroad was killed by a train at a point one and one-half miles from the mill, held, that the remedy of his widow was not limited to proceeding under the Workmen's Compensation Act.—Kirby Lumber Co. v. Scurlock, Tex., 229 S. W. 975.

53. **Monopolies**—Price Fixing.—That a manufacturer indicated a sales plan to wholesalers and jobbers, which fixed a price below which the wholesalers and jobbers were not to sell, and called this particular feature of the plan to the attention of the wholesalers and jobbers on many different occasions, and that the great majority of the wholesalers and jobbers expressed no dissent from the plan, but actually co-operated in carrying it out by selling at the prices named, did not alone establish an agreement or combination to maintain resale prices, forbidden by the Sherman Act.—Frey & Son v. Cudahy Packing Co., U. S. S. C., 41 Sup. Ct. 451.

54. **Municipal Corporations** — Depression in Street.—Those using highways are bound to note where they are going, and, if they fail to do so, are barred from recovery of damages for injuries sustained, though negligence on the part of the municipality appears.—Montgomery v. City of Philadelphia, Pa., 113 Atl. 357.

55.——Icy Sidewalk.—Though a traveler knew that a sidewalk was icy and dangerous to pedestrians, she is not by law required to avoid use of the walk, but is merely bound to use reasonable care proportionate to the danger, so a pedestrian cannot be deemed negligent because she used an ice-covered sidewalk instead of a path beside it; there being no evidence as to the condition of the path.—City of Linton v. Maddox, Ind., 130 N. E. 810.

56.——Legislative Grant.—The Legislature has power to grant to the city of New York the right to operate a railroad over the Williamsburg Bridge; such a grant not being violative of Const. art. 8, § 10, providing no city shall be allowed to incur any indebtedness except for city purposes.—City of New York v. Brooklyn City R. Co., N. Y., 187 N. Y. S. 523.

57.——Lighting Streets. — In lighting its streets a municipality is not exercising its governmental functions, so as to be free from liability to those injured by coming in contact with wires used for lighting purposes.—Stedwell v. City of Chicago, Ill., 130 N. E. 729.

58. **Partnership**—Joint Tort-Feasors.—Where a member of a firm of druggists negligently sold plaintiff poison, instead of a harmless medicine, all of the partners in the firm were liable as joint tort-feasors, and plaintiff could elect to sue one or all, and so, where all were joined, an amendment whereby the name of the firm and one partner were stricken, but which left in the allegations as to the firm, cannot be questioned, for the allegations as to partnership showed the status and relation of the other parties proceeded against.—Tucker v. Graves, Ala., 88 So. 40.

59. **Principal and Agent**—Termination of Contract.—Where a contract for the sale of patterns by a merchant was terminated as to the requirements for keeping patterns in stock by notice given in accordance with the terms thereof, though the merchant was not required to return unsold patterns until six months thereafter, the provision in the contract forbidding the merchant from handling patterns of other makers was terminated by the notice.—Butterick Pub. Co. v. Frederick Loeser & Co., N. Y., 187 N. Y. S. 500.

60. **Railroads**—Loss of Easement.—Where a railroad company by nonuser had lost its easement of right-of-way, it has no rights to be protected and enforced by the equitable remedy of injunction.—Boyleston v. Seaboard Air Line Ry. Co., S. C., 106 S. E. 777.

61. **Sales**—Loss of Profits.—In an action for damages brought by a purchaser of a tractor against the seller for conversion thereof by the latter, on the purchaser's failure to make payment after he had plowed only part of his potato land, the conversion causing a delay in plowing the remainder, whereby the crops were lost, consisting of high grade potatoes, damages for the loss of anticipated profits held not recoverable as the ordinary, usual, or commonly to be expected consequences of the tort.—Cannon v. Oregon Moline Plow Co., Wash., 197 Pac. 39.

62.——Special Damages. — Special damages, such as expected profits from a resale, may be recovered, if at the time of making the contract the buyer has an existing contract of resale and the purchase is made for the purpose of filling it and the goods cannot be otherwise procured and the seller is apprised of these facts when the contract is made.—Dreyer Commission Co. v. Fruen Cereal Co., Minn., 182 N. W. 520.

63. **Specific Performance** — Abandonment of Contract.—The acquiescence by complainant in the sale by defendant company of a tract of land, which it was developing by means of canals and ditches, including a part of the tract which complainant had contracted to purchase, thereby becoming a member of the company, when an overflow from the Mississippi destroyed the drainage works, held an abandonment of his contract, and to preclude his afterwards maintaining a suit for its specific enforcement.—Eddy v. St. Charles Land Co., U. S. C. C. A., 271 Fed. 254.

64. **Street Railroads** — Contributory Negligence—A wagon driver, who saw a street car approaching a block and a half away, and who slowly drove parallel to the track without looking back for a distance of 50 feet, and then without signal to motorman and without glancing back to ascertain proximity of car abruptly turned upon track to cross the street, held contributorily negligent. — Duford v. City of Seattle, Wash., 197 Pac. 14.

65. **Taxation**—"Income" Defined.—An income tax is an excise and not a tax on property within the meaning of the requirement of § 112 of the state constitution of 1890 that property shall be taxed in proportion to its value and shall be assessed for taxes under general laws and by uniform rules according to its true value.—Hattiesburg Grocery Co. v. Robertson, Miss., 88 So. 4.

66. **Telegraphs and Telephones**—Merger.—A telephone company, incorporated under the act for chartering telegraph companies, which desires to take advantage of Act July 22, 1919, providing for the incorporation of telephone companies and to secure from the Public Service Commission permission to merge with a competing telephone company, should, before applying to the Public Service Commission for the certificate of public importance, obtain from the court of common pleas a decree authorizing it to surrender its rights as telegraph company as provided by Act April 9, 1856.—Shaffer v. Public Service Commission, Pa., 113 Atl. 367.

67. **Wills**—Payment for Services. — If the value of real estate agreed by decedent to be given to plaintiff housekeeper for making a home for him and his brother and the value of plaintiff's housekeeper's services were treated by the parties in making the contract as commensurate, plaintiff housekeeper's recovery, where defendant administratrix sets up the statute prohibiting oral agreements to make a will, can be had solely on the ground that the contract having been repudiated by defendant administratrix, plaintiff is entitled only to payment for services actually rendered.—Donovan v. Walsh, Mass., 130 N. E. 841.